Connecticut Department of Social Services

Making a Difference

Testimony before the Aging Committee

March 6, 2012

Good morning, Senator Prague, Representative Serra and distinguished members of the Aging Committee. My name is Pam Giannini, Director of Aging, Community and Social Work Services, as well as Director of the State Unit on Aging, at the Department of Social Services. I am joined by Marc Shok, Adult Services Program Manager at DSS. We are here today to testify on a number of bills that impact the Department and our clients.

H.B. No. 5336 (RAISED) AN ACT INCREASING FUNDING FOR ELDERLY NUTRITION.

This bill would not result in any policy changes to the Elderly Nutrition Program but does increase the state portion of funding. The Elderly Nutrition Program is funded by a variety of sources, including federal, state, and local funds, as well as voluntary client contributions. It is not clear from the language in this bill if the intention is to appropriate an additional $3.7 million on top of the existing state appropriation of $2.5 million or to increase the state appropriation to a total of $3.7 million.

The Elderly Nutrition Program is a federally- and state-funded nutrition program that provides meals and other nutrition services to eligible participants, most of whom are age 60 and older. The program is authorized under Title III-C of the federal Older Americans Act (OAA). In addition to state and limited local funding, federal sources of funding include OAA Title III-C and the Nutrition Services Incentives Program (NSIP). Although a suggested donation is requested of participants, no one is denied a meal if they are unable to make a donation. To operate the program, Aging Services contracts with the Area Agencies on Aging, who in turn sub-contract with Elderly Nutrition Providers (ENPs). Meals are provided at congregate meal sites and by home delivery. Each meal must meet nutritional requirements and special dietary needs must be considered. In addition to providing meals, the program provides an opportunity for socialization at "community cafes," as well as nutrition education, nutrition counseling and access to social services.

<u>Program statistics</u>:

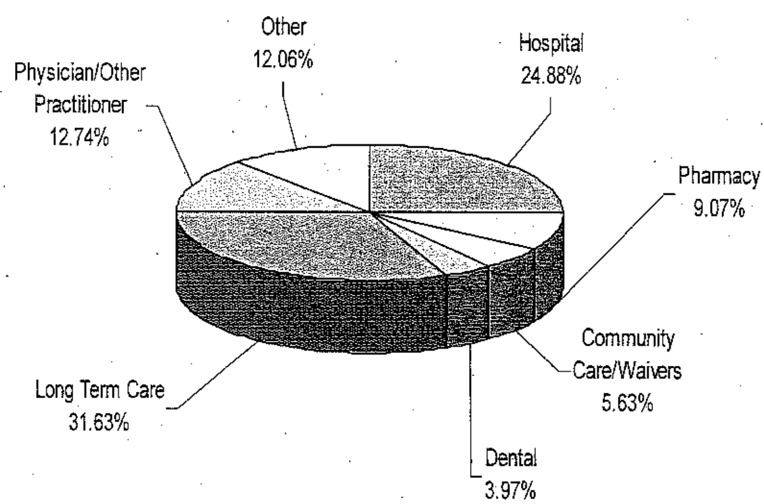
- The Elderly Nutrition Program serves more than 2 million meals each year with federal, state and local funds and voluntary client contributions.
- The program served 1,233,154 home-delivered meals to 6,239 consumers in FY 2011.
- The program served 832,916 congregate meals to 18,554 consumers in FY 2011.

- In FY 2011, the total federal funding for the Elderly Nutrition Program was $8,474,686.
- In FY 2011, the total state funding for the Elderly Nutrition Program was $2,495,942.

Funding for the program has been relatively level; rising food and transportation costs, along with reduced voluntary client donations, pose challenges to the agencies' ability to serve participants. This bill is well-intentioned but would result in an unbudgeted appropriation, and, therefore, the department cannot support the bill.

S.B. No. 282 (RAISED) AN ACT CONCERNING THE RETURN OF A GIFT TO A PERSON IN NEED OF LONG-TERM CARE SERVICES.

This bill would reverse a measure passed by the General Assembly in the 2012 budget. In essence, the bill would create an additional, unbudgeted burden on the Medicaid program by requiring the Department to formally reduce penalty periods associated with improper asset transfers made by individuals for the purpose of qualifying for Medicaid payment of long-term care services. Currently, approximately 32% of all health care costs are attributed to long-term care. The graph below demonstrates the vast amount of the Medicaid budget consumed by the cost of long-term care.



S.B. No. 282 would effectively rescind budget implementation legislation passed last year that prevents the use of partial asset returns as an estate planning strategy. The Department opposes this bill because it would shift additional long-term care costs to the Medicaid program, which is already the biggest program cost in the entire state budget.

The reduction in transfer-of-asset penalty periods required under this proposal would allow individuals to shelter additional assets for family members (typically, adult children) using an estate planning strategy commonly referred to as the "reverse half-a-loaf."

Under the reverse half-a-loaf strategy, a Medicaid applicant transfers all of his or her assets to qualify for assistance. The individual becomes eligible for Medicaid because he or she no longer has any counted assets; however, a penalty period is imposed, during which time Medicaid will not pay for long-term care services. Under federal law, the penalty period, once imposed, runs uninterrupted, regardless of any changes in the individual's Medicaid eligibility status. Once the individual has been granted Medicaid, estate planners advise transferees to return roughly half of the assets that were transferred. Although the individual now has counted assets in excess of the Medicaid asset limit and Medicaid is discontinued, the transfer of asset penalty period is shortened by approximately one-half and continues to run. The individual then uses the returned assets to pay for his or her long-term care services during the shortened penalty period. If timed properly, the individual spends all of the returned assets just as the penalty period ends, and regains Medicaid eligibility, including payment for long-term care services. The transferee retains the other half of the transferred assets.

Example: Mr. Jones enters a nursing home in October, transfers $100,000.00 (all of his assets) to his son and applies for Medicaid. He qualifies for Medicaid as of October 1st as he no longer has any assets. The Department, however, imposes a ten-month penalty period, during which Medicaid will not pay for his long-term care services.

In November, the son returns $50,000.00. Under the current statute, the penalty period would remain at ten months as not all of the transferred assets have been returned. Mr. Jones could, however, use this $50,000 to pay for his care during the penalty period.

Under the proposed legislation, the Department would be required to shorten the penalty period to five months. Medicaid would be discontinued due to excess assets, and Mr. Jones would use the $50, 000.00 to pay for his long term care services during the new, reduced five-month penalty period, exhausting these assets by the end of February. Mr. Jones would regain Medicaid eligibility as of March, including payment for long-term care services. Mr. Jones' son retains the remaining $50,000.00. There is effectively no penalty for this improper transfer and the cost of nursing home care for five months is shifted to taxpayers via the Medicaid program.

The current statute, which requires the return of all transferred assets before any adjustment of the penalty period is made, encourages partial asset returns when full returns cannot be made. Although the penalty period is not adjusted in the event of a partial return, returned assets can be used to pay for long term care services during the penalty period, effectively reducing its length.

Continuing with the previous example, the $50,000 that is returned to Mr. Jones can be used to pay for his care for five months. The original 10-month penalty in which Medicaid will not pay for long term care services remains in place under the current statute because not all of the transferred assets were returned. Mr. Jones, however, will owe the nursing facility for five months of care after using the returned assets to pay for his care. His penalty period is effectively reduced by using the $50,000 that was returned to him to pay the nursing facility.

The current statute, enacted last year, prevents the reverse half-a-loaf strategy. Individuals who improperly transfer assets to qualify for Medicaid are not penalized if all of the assets are returned. Returned assets are generally counted when they are returned; however, they are regarded as continuously available if it is apparent that estate planning strategies are being used. This recognizes that there are transfers and returns that are not orchestrated for the purpose of getting around the eligibility rules. The current statute is consistent with federal Centers for Medicare and Medicaid Services guidance as a "reasonable methodology for considering the availability of returned assets for the purposes of Medicaid eligibility."

We strongly oppose the bill as we believe that people who have the means to pay for the costs of their own nursing home care should do so. This bill will result in significant unbudgeted costs as it will require the state to pay for care that could have been paid for by the individual if the assets had not been transferred.

S.B. No. 283 (RAISED) AN ACT CONCERNING THE TREATMENT OF BENEFITS RECEIVED UNDER THE VETERANS' AID AND ATTENDANCE IMPROVED PENSION.

This bill proposes that Veterans' Aid and Attendance be excluded from determining eligibility for State Supplement, Medicaid and the Connecticut Energy Assistance Program. We believe that the impact would be minimal due to the small number of clients that would be affected and could easily be implemented by the department. Therefore, based on the information we have at this time we do not oppose this proposal.

H.B. No. 5338 (RAISED) AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.

Under this proposed legislation, the 'community spouse' (meaning the spouse who remains in the community when the other spouse enters long-term care) would retain marital assets up to a maximum of $113,640, which is the maximum amount allowed under federal law. Currently, community spouses of long-term care Medicaid recipients are allowed to keep one-half of the couple's liquid assets, up to the federal maximum of $113,640, exclusive of the community spouse's home and one car. Pursuant to federal law, community spouses are allowed to keep a minimum of $22,728.

In the 2010 session, the legislature passed Public Act 10-73, which did exactly what this bill proposes, to allow the community spouse to retain up to the federal maximum. However, the fiscal 2012-2013 budget adopted by the legislature in 2011 reverted to the policy that was in place prior to PA 10-73, due to the projected costs of over $31 million.

	Pre-2010	2010	2011	2012 Proposed
Community Spouse Protected Allowance allowed under CT law	Community spouse could retain one-half of the marital assets, up to federal maximum protected amount of $109,560 at the time.	PA 10-73 allowed the community spouse of an institutionalized individual to retain the full, maximum protected amount, as determined by federal law ($109,560).	PA 11-44 reversed PA 10-73; community spouse could retain one-half of the marital assets, up to the federal maximum protected amount of $109,560 at the time.	S.B. No. 229 would allow the community spouse of an institutionalized individual to receive the maximum protected amount, as determined by federal law (currently, $113,640).

To demonstrate the potential fiscal impact of this change, we offer the following two examples.

1. Mr. S entered a nursing home on October 1, 2011. The spousal assets as of that date were $80,000. They applied for Medicaid on October 1, 2011.

   Under the current rules, Mrs. S was allowed to keep one-half of the spousal assets ($40,000), plus the home and one car. The couple reduced their assets of $80,000 to $40,000 for Mrs. S and $1,600 (the Medicaid asset limit) for Mr. S in December 2011, and DSS granted Medicaid eligibility for Mr. S. They spend $11,000 of their money on Mr. S's nursing home care – approximately one month worth's of care. The rest of the money was spent on funeral contracts and home repairs.

   Under the proposed legislation, Mrs. S would automatically be allowed to retain assets up to $113,640 – the maximum amount allowed under federal law. Since their assets were below this amount when Mr. S was admitted to the nursing facility, Mr. S would have been immediately eligible for Medicaid, shifting cost of nursing home care for one month to the Medicaid program.

2. Mr. H entered a nursing home on August 1, 2011. The spousal assets as of that date were $150,000. They applied for Medicaid on November 1, 2011.

   Under the current rules, Mrs. H is allowed to keep one-half of the spousal assets ($75,000) plus the home and one car. The couple reduced their assets of $150,000 to $75,000 for Mrs. H and $1,600 (the Medicaid asset limit) for Mr. H in December 2011, and DSS granted Medicaid eligibility for Mr. H. They spend $35,000 on home repairs for Mrs. H and $40,000 on Mr. H's nursing home care – approximately 3½ months of care.

Under the proposed legislation, Mrs. H would automatically be allowed to retain assets up to $113,640 – the maximum protection amount allowed under federal law. They would only need to spend $34,760 to be eligible ($150,000 - $113,640 for Mrs. H - $1,600 for Mr. H), which they can accomplish through the home repairs. They would not need to spend any money on Mr. H's care and would therefore shift the cost of care for 3 ½ months of care to Medicaid.

Only 13 states allow the community spouse to keep the full federal maximum ($113,640) without adjustment. We believe that the state's current policy, which has been in place since 1989 (with the exception of FY 11), is fair and reasonable. We do not support this bill as it would require funding of over $31 million, which was not included in the Governor's recommended budget adjustments.